
FOREWORD: MINDFULNESS, WRITING, AND THE “INNER LAWYER”

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FOREWORD

My first few months of law school were hard in the most satisfying of ways. I remember the feeling, almost physical, of my brain stretching, and I remember loving it. I was high on what Patricia Williams calls the “crisp, refreshing, clear-headed sensation that the ‘thinking like a lawyer’ purportedly endows.”¹ Puzzle upon puzzle, and I could do this, I could crack these codes and talk this talk that powerful people talk. I could become one of those powerful people, and use it to help build what Charles Eisenstein calls “the more beautiful world our hearts know is possible.”²

Then something shifted. I didn’t find traction at my 1L summer job, I was bored in most of my 2L classes, and most distressingly, I started to sense that the dialectical reasoning and razor-sharp analysis that we so prize in law school would be useless when applied to the issue I cared most about, the issue that had led me to want to become a lawyer.³ The limited version of law I was exposed to in most of my classes wasn’t going to do the work, and it might do harm; it might reinforce the walls that divide us. What I feared most was that in the process of becoming one of its foot soldiers, the walls in my own heart might also ossify.

I remember this realization as another almost physical feeling. A heaviness, a tightness in my throat and my chest, an ever-present cloud of exhaustion. Oh. Maybe this isn’t for me. Maybe going to law school was a mistake. Maybe I belong to some other tribe.

But I’d already taken on some debt, I had no realistic Plan B, and if I quit I would disappoint my parents (who had been anxious ever since I majored in philosophy in college). So I plugged along.

Then I discovered tax, which combined the puzzle solving I used to love when I’d studied physics with a rich system for thinking about the distribution of resources in society, about justice. Tax was “thinking like a lawyer” in the service of making the world a better place in a way that didn’t raise the same conflicts that other areas had. Whereas approaching torture, or

¹ PATRICIA WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 12 (1991).

² See CHARLES EISENSTEIN, *THE MORE BEAUTIFUL WORLD OUR HEARTS KNOW IS POSSIBLE* (2013).

³ Growing up as a Jew in Israel, I experienced the Israel-Palestine question as a Gordian knot of devotion and shame, pride and guilt, belonging and alienation, beauty and terror. Israel is the result of centuries of European anti-Semitism culminating in the *Shoa*, (known as “the Holocaust”), and in *tchiya* (rebirth), in the creation of a Jewish State. I love this place while also recognizing its founding as the *Nakba*, the catastrophe that displaced millions of Palestinians. In my opinion, what is needed in Israel-Palestine is a process that can hold all these conflicting emotions and histories, a process of healing and forgiveness, including through reparations, not unlike the process I believe we need in this country around race.

discrimination, or clean air through the language of efficiency and reasonable men seemed jarring, using these types of tools to think about money was more palatable, elegant even. Through tax I also found my way to the world of legal graphics and to a job offer that lent a sense of calm confidence to my 3L experience. By the time I graduated, I had rekindled the fire that seemed all but extinguished when my doubts were at their worst.

How did I get from the dead end to my next trailhead? What stopped me from giving up? What prevented me from being so demoralized that when tax and graphics came along I wasn't too shut down to see them?

When I was in law school, I didn't have a mindfulness practice. I'd never heard the word, and if someone had invited me to meditate I probably would have declined. But I did have something that I now understand as a mindfulness practice of its own. I had writing.

I'd been journaling since I was 10, when my mother's friend Patty⁴ gave me my first diary. For the first few years, my journal was where I went to process my personal life. In college, when I took philosophy and architecture classes, my journal got replaced with a sketchbook, and the line between the personal and work began to blur. Dreams, building sketches, reveries about love, and Heidegger quotes wove together seamlessly. My law school journals mixed different themes—now I was sketching like-kind exchanges, quoting Judge Learned Hand and Justice William Douglas, and circling around the questions that preoccupy many law students. Why am I here, and where am I going? Why law? Can I find a niche within this profession that feels right?

Soon, my journal entries started to bleed into live conversations and email correspondence with other seekers. Most were also writers. They were colleagues from my summer jobs, foreign LLM students, a high school friend at another law school, an adjunct professor and criminal defense attorney who did his research at the public computer terminal in the library not far from my carrel. "What are you working on?" Larry would ask each time I passed. Before long, this turned into "I got something for you, you're gonna love this!" He beamed as he handed me a stack of articles he'd found on JSTOR.⁵

⁴ For window into some of Patty's own wonderful writing, see PATRICIA VOLK, *STUFFED* (2002).

⁵ Larry Fleischer, my informal mentor while I was at NYU, came up with the title to my final paper: *Who Owns Your Attention?* (The paper argued for a right to be free from unwelcome intrusions of music, ambient television, and fragancing in public spaces like hospital waiting rooms, airports, and train stations).

Somehow, these conversations were qualitatively different from my dialogue with classmates or professors. It wasn't that the law school people I met weren't engaged, but they adhered to an unspoken agreement that divided the personal from the professional. The dominant ethos among my peers was “fake it ‘til you make it”; sharing my doubts didn't feel safe. Yet acknowledging doubts was a critical component of what I needed to shed the sense that law was something “out there” ruling over my small insignificant life, something alien I couldn't belong to without “covering”⁶ aspects of my identity that didn't fit the image.

As I see things now, doubts, anger, and vulnerability are like waves in the ocean. Resisting them only enhances the pain, whereas ducking until they pass squanders the opportunity they present. Learning how to ride these emotions is where the deep learning and growth happen, and for me this happened through my journals, my papers, and, over time, in community with other writers and scholars who bridge the personal and the professional.⁷ These practices and dialogues made it possible for me to see law as a story of which I was both reader and co-author, as a two-way relationship, a relationship I actually want to be in.⁸

What, you might be asking, does any of this have to do with mindfulness? What exactly is mindfulness? Jon Kabat-Zinn defines mindfulness as non-judgmental present moment awareness.⁹ Ram Dass puts it even more succinctly: “Be here now.”¹⁰

These definitions, though helpful initially, have, over time, felt incomplete. They describe the practice, not its fruits. For me mindfulness is about being present in a way that helps me discern my deeper intentions, and that empowers me to more closely align my actions with these intentions. Mindfulness has dampened my addiction to external signs of success and increased my awareness of when and how my ego takes over.¹¹ It has reduced

⁶ KENJI YOSHINO, *COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS* (2006).

⁷ See PETER GABEL, *ANOTHER WAY OF SEEING* (2013); Robin L. West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 15 WIS. WOMEN'S L.J. 149, 158 (2000).

⁸ If you're thinking “that's easy for you to say, you're a professor,” please reach out to me and let me put you in touch with my heroes in practice—including people I've met at mindful lawyers' conferences at UC Berkeley, at the Law and Social Change Jam, through the Project for Integrating Spirituality Law and Politics, and through the contemplative lawyering community here in Richmond. These extraordinary attorneys are living, breathing manifestations of a vision of what law is and can be that is so much broader than I realized was possible when I was in law school. Law isn't static, it isn't words in books or databases. Law is an organism with porous boundaries that are constantly being negotiated and renegotiated, and not only by those who nominally hold the most power.

⁹ See JON KABAT-ZINN, *COMING TO OUR SENSES: HEALING OURSELVES AND THE WORLD THROUGH MINDFULNESS* 108 (2005).

¹⁰ RAM DASS, *BE HERE NOW* (1971).

¹¹ See Elizabeth Gilbert, *Your Elusive Creative Genius*, TED (Feb. 2009), <http://www.ted.com>

my anxiety-laden attachment to outcomes and made me more efficient and effective at doing my best and wasting less time worrying about things I cannot control.¹² And mindfulness has helped me shift from experiencing myself as primarily separate from the world and opened me to a felt sense of interconnectedness.¹³

To be clear, mindfulness is not magic, and I am not free of anxiety, egoic attachments, etc. What I have is a method for waking up to these, over and over, with small incremental advances in the amount of time it takes me to catch myself and in the strength of my resolve to choose another course. This is why we use the term “practice.”

Most often, mindfulness is cultivated through meditation, but as the essays in this issue demonstrate, writing can be another rich gateway to the same shifts in perspective. Meditation and writing—especially writing that allows the author’s personal voice to shine through—are both awareness practices.¹⁴

Sometimes the guiding intention is focusing attention; we attend to something that is happening right here and now, an “anchor.” In meditation, the anchor is usually something we access through the senses like the breath, or the body (a “body scan”). In writing, it might be the topic of a paper or an exercise.¹⁵ Over time, attention practices can strengthen the mental and emotional muscle that enables us to resist distractions and be

/talks/elizabeth_gilbert_on_genius; Elizabeth Gilbert, Success, Failure and the Drive to Keep Creating, TED (Mar. 2014), http://www.ted.com/talks/elizabeth_gilbert_success_failure_and_the_drive_to_keep_creating.

¹² See TARA BRACH, RADICAL ACCEPTANCE (2004); PEMA CHODRON, START WHERE YOU ARE (2001); James Jacobson-Maisels, Remarks at the Univ. of Richmond (June 28, 2013) (on file with author) (“Acceptance does not mean all is for the best in the best of all possible worlds Acceptance is not saying that this is okay. Acceptance is saying that I can acknowledge the truth and be with the fact that this is the way that it is at this moment [instead of resisting it]. Which is totally different from the question of wisdom, which is: Given that this is the case in this moment, and I can open to it and see that, what do I now do about it? What I . . . do about it might be: I go out and protest. Or I stop this person from doing damage Acceptance is not about being passive. It’s not about sitting back and just letting things happen. It is about saying: I can see and accept and acknowledge that this is what is actually happening to me And then it’s a second piece, and this is crucial, especially if you’re working in social justice, or any kind of work . . . which is adversarial. Acceptance is acknowledging the difference between saying: ‘I want the world to be a certain way because it’s the best way the world could be and I’m going to work as hard as possible to make that a reality,’ versus ‘the world *has* to be this way.’ As soon as we believe the world *has* to be this way, we’re in big trouble. Because we just don’t control that.”).

¹³ See SHARON SALZBERG, *Being with the World: Facing Our Interconnectedness*, on UNPLUG (Sounds True, Inc. 2007); THICH NHAT HANH, ESSENTIAL WRITINGS 55 (2001) (discussing “interbeing”). Cf. Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1 (1988) (identifying the dominant paradigm that has shaped American jurisprudence as rooted in a view of human beings as separate from one another, and proposing an alternative paradigm based on a “connection thesis.”).

¹⁴ For a discussion of contemplative practices employed in the writing process, see SONDRAL PERL, FELT SENSE: WRITING WITH THE BODY (2004).

¹⁵ E.g., reread your law school application essay and reflect on how, if at all, your goals have changed.

fully engaged in a given task, tapping into what athletes call being “in the zone.” It also increases our resilience and our tolerance for staying present in uncomfortable or difficult situations (like delivering bad news or realizing we’ve made a mistake).

Other times the guiding intention is “open awareness.” In meditation, this takes the form of witnessing all that is arising in the moment without judgment or resistance. This is subtly different from daydreaming; witnessing means that we’re constantly maintaining awareness as thoughts and feelings arise and pass through rather than mindlessly following them. In writing, this is “freewriting” or stream of consciousness—allowing anything and everything to move through the pen and onto the page. The practice here is to write for a predetermined amount of time even if we have nothing to say (in which case we can write: I have nothing to say) and to approach the exercise with curiosity and nonattachment. If by the end of the time all we’ve done is express our resistance to the process, that’s perfectly fine and may in itself lead to some insight. But often writing is generative; it surfaces something unexpected, something quite different from what we imagine we’re going to say before we begin.

Open awareness practices can be especially useful in helping our “inner lawyer” reorient toward challenges. When we are not mindfully attuned, our inner lawyer often defaults into two main strategies: identification and resistance.

Identification feels like this: when we are successful, we are high. When we fail, we are low. These two poles and the gradations in between are the only reality. There is no other, more constant ground within us that can hold anything without becoming it. When we are caught in identification, we become the anger, the pride, the fear, the relief. As long as our successes outpace our failures, we may be nominally ahead, in a “net profit” position. But knowing that this balance depends on external success is exhausting; over time, it can mean that we are never truly at peace.

Alongside identification, the inner lawyer’s alternate default is resistance. Resistance might manifest through numbness, evasion, distraction, denial, or cynicism. When things are good, we take them with a grain of salt. Knowing they will pass, we inoculate ourselves against disappointment by mistrusting, by tempering our enthusiasm. When things are bad, we cope by trying to escape, often unconsciously.

Mindfulness generally, and open awareness in particular, can help us tap into a third orientation, a “sweet spot” that lies both along and outside of the identification-resistance continuum. The sweet spot is not quite a measurable midpoint but rather a modality that balances the extremes while also

hovering in a third dimension. Like the perfect spot on a racket, it requires practice and artistry to find. The sweet spot is an inner witness that notices when we slip into identification or resistance, when we either become or disassociate from whatever experience is barreling through us in a given moment. It notices without judgement, and then asks two questions: What is my intention? And how might I align my actions with this intention?

The inner witness is like a good lawyer. She listens patiently and humbly, in a way that leaves the client feeling totally heard and respected. No matter what has happened, the lawyer can hold it with total acceptance. This is reality, this is what we have to work with. Next, the good lawyer counsels her client with just the right measure of compassion and distance; she doesn't absorb the client's pain, anxiety, or guilt, but she doesn't present a cold front either. She has the equanimity and discernment to see the forest and the trees, the courage and resilience to hold the client's hand and walk her through. The path might be full of obstacles, but a good guide can turn the journey into a healing experience.

I really believe this. I think a juris doctor is a kind of doctor, a person who can diagnose or treat illnesses in society. But it is harder to heal others without at least some practice in the art of healing ourselves.

The essays in this collection provide a window into my ongoing conversations on these themes with students, mentors, and colleagues—including in connection with a seminar called “Mindfulness and the Legal Profession”¹⁶ and a faculty learning community exploring “The Law as a Healing Profession.” Every one of these authors is engaged in what I see as the same type of writing and community-building practices that saved me from quitting when I was in law school, and that I hope, through this issue of the *Richmond Journal of Law and the Public Interest*,¹⁷ might reach others who wrestle with similar questions.

Deborah Cantrell—a scholar of domestic violence, social justice, and Buddhism, and a director of clinical programs—writes about how her own evolving meditation practice shifted her orientation towards love and anger in lawyering. John J. Osborn—author of *The Paper Chase*—reimagines what Professor Kingsfield might have been like had he adopted a meditation practice. Peter Huang—a scholar of business law, law and neuroscience, and happiness—extrapolates from a previous essay he wrote about “tiger parenting” and legal education (Huang was raised in the U.S. by a Chinese “tiger mom”) to share his experiences integrating mindfulness into

¹⁶ Formerly “The Lawyer as Peacemaker.”

¹⁷ Soon to be renamed the *Richmond Public Interest Law Review*.

his courses. Ann Hodges—a scholar and teacher of labor law who has mentored generations of public-interest oriented students (including Victor Narro, who also contributed to this collection)—shares her journey connecting her commitment to social justice with her Christian faith. Scott Rogers—one of the founders and leaders of the mindful lawyering movement—introduces the concept of “reciprocal practice,” a vision of mindfulness as integrated with rather than separate and apart from our professional lives. Robin West—feminist legal theorist and professor of law and philosophy—writes about law’s influence on emotions, including the “outsized authoritarian feelings” produced by American constitutional law and the “alienation from ... subjective desires” produced by our “emergent ‘culture of contract.’” David Zlotnick—an attorney at the Federal Energy Regulatory Commission and professor of experiential education—writes about how mindfulness can help students find an authentic persona as trial lawyers. Angela Harris—a critical race scholar and a distinguished professor of law—writes about her experience using mindfulness to introduce a “lawyer as peacemaker” sensibility to students as they forge a professional identity. Linda Alvarez—a trailblazer in the conscious contracting movement—calls on transactional lawyers to approach contracts not as “weapons of war” but as catalysts for peace, inviting lawyers to replace fear-driven modes with a vision of themselves as constructive collaborators. Susan Brooks—an associate dean for experiential learning, who has also been a clinical law professor and social worker—writes about “relationship-centered lawyering” and the importance of teaching healing practices, which she refers to here as “effective communication practices,” to law students. Victor Narro—a labor and immigration rights advocate—shares advice for recent graduates drawing on the teachings of Thich Nhat Hanh and St. Francis of Assisi. Christopher Corts—an appellate attorney and legal writing professor with a master’s degree in theology and a prior career as an actor—contributes a poem, a window into his experience sitting in silence with lawyers.

Most of the student contributions are selections from ungraded reflections. (The grade in the class is based on an anonymous exam). The goal of the writing assignments was to create an opportunity for students to explore a topic that was pressing to them in a framework that minimized (or at least reduced) the pressure to impress.¹⁸ Each paper was distributed to the class and we held a discussion that I will describe as a mindful version the standard workshop format. Instead of presenting their papers as they would if

¹⁸ I often described the research involved as a quest to “find friends” as well as “enemies”—scholars, philosophers, visionaries, alive or dead, who have something to say about the question burning in the student’s heart. See Shari Motro, *The Three-Act Argument: How to Write a Law Article that Reads Like a Good Story*, 65 J. LEGAL EDUC. 707 (2015).

they were defending a thesis, students listened to feedback and then dialogued with readers with the goal of discovering and better articulating the beating heart of their work. The essays included in this volume are lightly edited products of these workshops—snapshots of the authors’ views written while in law school. M.C.—a student who decided to become a lawyer following his work with Syrian refugees—describes how his clinical experience and mindfulness practices helped him overcome the alienation he attributes to the absence of morality in the traditional first year curriculum. Dominique Simon also enrolled in law school motivated by a social justice mission, and he too was disillusioned. He writes about how his anger over the legal system’s role in perpetuating injustice eventually led him to a spiritual awakening and about how mindfulness helped him build a bridge between his spiritual path and his identity as a law student. B. Allen Wall shares his experience helping an illegal immigrant fight deportation. Her gratitude clicked him out of his preoccupation with grades and infused his law school experience with a sense of purpose.

Some people believe that these conversations are extraneous to the mission of legal education, that scholarship, conferences, or coursework exploring one’s personal path in the law are neither “law-related” nor “academic” in any rigorous sense of the word. The late Justice Antonin Scalia, for example, lamented the “proliferation of narrow (not to say silly) elective courses” as part of a trend that produces graduates who did not take courses “basic to a complete legal education” like First Amendment Law, Evidence, or Federal Income Tax.¹⁹ Students can only take so many classes during law school; their time here is precious, and there is so much to learn as law becomes ever more complex and specialized. Mindfulness belongs, if anywhere, in extracurricular programming under the auspices of wellness or career offices.

On bad days, I agree. I agree with skeptics not only because of the opportunity cost that taking a mindfulness class may represent. I also have doubts about whether and how mindfulness can be organically integrated into the law school experience, an experience that often is dominated by messages that run counter to a mindful orientation. In a world in which grades and rankings are a constant preoccupation (even when they are cor-

¹⁹ See Antonin Scalia, *Reflection on the Future of the Legal Academy*, 2014 William & Mary Commencement Address (May 11, 2014), archived at <http://perma.unl.edu/3BSR-43WR>, at 5. See also *id.* at 4 (It is something of an open secret now that the second and third years of school offer a student the chance to study whatever strikes his or her fancy — so long as there is a professor who has the same fancy. It is also well known that many of the courses from which the student may choose have a distinct non-legal flavor, to say the least... [courses like] ‘Effective and Sustainable Law Practice: the Meditative Perspective.’”).

dially unnamed), in which vulnerability is shunned, being present with the truth of one’s experience can create cognitive dissonance. This is why I have not promoted the course and why writing this forward has been challenging. I’m treading a fine line here, trying to share the work I believe in without marketing it. I trust that the students who are called to undertake the process I offer will find their way to me. I know that those who do come get something valuable, but I also worry that the prospect of being graded interferes with their process.

On better days, notwithstanding these reservations, I am committed. As long as there are students and colleagues who want to walk this path and an administration that enables us to do it, I will continue to offer spaces in which the integration of the personal and professional can be explored within and in conversation with our academic careers. I know that the same is true of many of the trailblazers who have contributed to this collection—each offering the fruits of their practice in their own unique way.

In his Letter from a Birmingham Jail, Martin Luther King wrote: “I am not afraid of the word ‘tension.’ I have earnestly opposed violent tension, but there is a type of constructive, nonviolent tension which is necessary for growth.”²⁰ Though mindfulness may create dissonance for students eager to adopt the lawyer-as-steel-man persona, for too many others law school is a traumatic experience.²¹ Mindfulness is not for everyone, and, even for those who are the most hungry for it, it can be extremely challenging. Being present is not easy, it creates tension—that’s why people try to escape through alcohol, drugs, etc. But for those who feel called to engage in this type of inquiry and for whom mindfulness is a helpful vehicle for doing so, a formal framework that legitimates devoting time and energy to finding not only our external lawyer persona but also the wise counselor within can be a rare and important opportunity.

In the same letter, King also wrote: “Too long has our beloved Southland been bogged down in a tragic effort to live in monologue rather than dia-

²⁰ Martin Luther King, Jr., *Letter from Birmingham Jail* (Apr. 16, 1963), in *WHY WE CAN’T WAIT* 82 (1964).

²¹ A recent study found that while students enter law school as likely to be depressed as the rest of the population (8-9%), by the time they graduate 40% suffer from depression. Their next step is to join a profession that has the highest rates of depression of any occupational group, and among the highest rates of alcoholism. More than 1/3 of attorneys are problem drinkers and over a 1/4 are clinically depressed. Dave Nee Foundation, *Lawyers & Depression*, DAVE NEE FOUNDATION, <http://www.daveneefoundation.org/scholarship/lawyers-and-depression/> (last visited May 8, 2016). Though alarming student debt loads and a tight employment market surely explain some lawyers’ difficulties, these statistics are not new; they precede the economic crisis that has been shifting the landscape over the last few years. Suicide rates in our profession are also unusually high. I have personally known three.

logue.”²² In a sense, mindfulness invites us into dialogue. Dialogue with ourselves, dialogue with colleagues and mentors, dialogue with this thing we call Law. If we are lucky, it can help us turn it into more than a job or a career. If we are lucky, Law can become a vocation, an ongoing and evolving relationship, perhaps even a healing one.

²² King, *supra* note 21, at 83.